

right knee arthroscopy and debridement, which occurred on May 11, 1999. The Office subsequently accepted a left knee sprain as a consequential injury.

On June 2, 2000 appellant filed a claim for a schedule award.

By decision dated January 29, 2001, the Office granted appellant a schedule award for a 26 percent permanent impairment of the right lower extremity. The period of the award ran for 74.88 weeks from July 20, 2000 to January 27, 2001.

In an April 5, 2004 report, Dr. Fred Blackwell, a treating Board-certified orthopedic surgeon, diagnosed right knee degenerative joint disease with chondromalacia of the femoral condyle and patella Grade 2-3. He noted her range of motion of the knee as 0/0 for extension and “flexion right over left 100/110 degrees.” A physical examination of the right knee showed “swelling by inspection,” no instability, “tenderness of the suprapatellar ligament with parapatellar tenderness, medial and lateral joint line tenderness,” and right knee over left knee circumference of 47/46 centimeters. In concluding Dr. Blackwell noted that appellant had chronic pain which he characterized as an 8 on a scale of 1 to 10, with 10 being severe pain and 0 being no pain.

In a report dated April 18, 2004, the Office medical adviser concluded that appellant had total impairment of 28 percent for the right lower extremity and 5 percent impairment for the left lower extremity. In determining the impairment rating for the right lower extremity, he noted:

“[T]he previous award of 26 percent was in part based on a 7 percent award for loss of ankle motion, combined with 2 percent for loss of subtalar motion, combined with 6 percent for ankle pain factors. The current report indicates significant right knee pain, with pain preventing certain activities, and this would be graded quite high as per the Grading Scheme (Table 16-10, [p]age 482, fifth edition of the [American Medical Association,] *Guides [to the Evaluation of Permanent Impairment]*). This would be a [G]rade 11 or an 80 percent grade of a maximal 7 percent (femoral nerve), equivalent to a 5.6 or rounded off to a 6 percent impairment for the pain factors. Records describe a range of motion of 0/0 through 100/110 which would be considered ‘Mild,’ or a 10 percent impairment, as per Table 17-10. The records do not indicate measurable atrophy or weakness with the notation that she was too obese.”

The Office medical adviser then calculated the impairment rating as follows:

“[A] seven percent impairment for loss of ankle motion, combined with two percent for loss of subtalar motion, combined with six percent impairment for pain factors. (It should be noted that records subsequent to the review of November 26, 2000 do not address the ankle issues, either the subjective complaints or the objective findings.) Currently, the records would indicate a 10 percent impairment for loss of right knee motion, combined with 6 percent for pain factors. Utilizing the Combined Values Chart, the 6 percent impairment for ankle pain factors, combined with the 2 percent impairment for loss of subtalar, combined with the 7 percent loss of ankle motion, combined with the 6 percent

for ankle pain, combined with 10 percent for loss of knee motion would be equivalent to a 28 percent impairment of the right lower extremity....”

With regard to left knee impairment he concluded, based upon Table 17-31, that appellant would have a five percent impairment based upon “findings of chondromalacia patella.”

By decision dated April 30, 2004, the Office granted appellant a schedule award for a 5 percent impairment of the left lower extremity and an additional 2 percent permanent loss of the right lower extremity, for a total impairment of 28 percent for the right lower extremity. The period of the award ran for 20.16 weeks from December 27, 2001 to May 17, 2002.

LEGAL PRECEDENT

The schedule award provision of the Federal Employees’ Compensation Act¹ and its implementing regulation² sets forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides*³ has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.⁴

ANALYSIS

The Office previously issued a schedule award to appellant for a 26 percent impairment of her right lower extremity on January 29, 2001. Appellant subsequently filed a request for an additional schedule award. On April 30, 2004 the Office issued a schedule award for a 5 percent impairment of the left lower extremity and an additional 2 percent impairment of the right lower extremity, for a total impairment of 28 percent for the right lower extremity. The record contains no medical evidence establishing that she is entitled to a greater impairment rating. Dr. Blackwell’s reports address appellant’s right and left knee conditions and her chronic pain, which he characterized as 8 on a scale of 1 to 10. He explained his examination of appellant and how the clinical findings correlated with the tables of Chapter 17 of the A.M.A., *Guides*. The Office medical adviser reviewed Dr. Blackwell’s April 5, 2004 report and concurred with his assessment of appellant’s impairment. For the left knee, the Office medical adviser noted that the footnote to Table 17-31 allowed five percent impairment for patellofemoral pain without joint space narrowing on x-ray. In rating the right lower extremity impairment, the Office medical adviser utilized the prior ankle impairment finding of 7 percent for loss of ankle motion,

¹ 5 U.S.C. § 8107.

² 20 C.F.R. § 10.404.

³ A.M.A., *Guides* (5th ed. 2001); *Joseph Lawrence, Jr.*, 53 ECAB ____ (Docket No. 01-1361, issued February 4, 2002).

⁴ *Ronald R. Kraynak*, 53 ECAB ____ (Docket No. 00-1541, issued October 2, 2001).

2 percent for loss of subtalar motion, combined with 6 percent for pain, combined with 6 percent for knee pain and 10 percent for loss of knee range of motion, to find a total of 28 percent impairment, or 2 percent more than previously awarded. The Board finds that the Office properly found that appellant was entitled to a 5 percent impairment for her left lower extremity and an additional 2 percent impairment for her right lower extremity, for a total impairment of 28 percent for her right lower extremity.

CONCLUSION

The Board finds that appellant is not entitled to more than a 5 percent impairment of the left lower extremity and an additional 2 percent permanent impairment of the right lower extremity for a 28 percent total impairment of the right lower extremity for which she received a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 30, 2004 is affirmed.

Issued: December 22, 2004
Washington, DC

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member